

ANNUAL REPORT
PANEL OF MEDIATORS
Fiscal Year 2001

The following report is submitted pursuant to 26 M.R.S.A. § 965(2)(E) (1988).

The number of new mediation requests received this fiscal year was significantly lower than that for the preceding year; there were 61 new requests compared with 73 in FY 2000 and 69 in FY 1999. During the last fifteen years, the number of new filings per year ranged from a previous low of 68 in FY 1998 to the record high figure--120 filings--in FY 1987. In addition to the new mediation requests received during the fiscal year just ended, there were 23 matters carried over from FY 2000 that required some form of mediation activity during the year. Last year, 20 matters were carried over from FY 1999. Thus, the total number of mediation matters requiring the Panel's attention in this fiscal year totaled 81, down slightly from 93 during the previous fiscal year. Anecdotal evidence from members of the labor-management community, together with the demonstrated demand for the Panel's services, establishes that such demand is essentially unaffected by the introduction of user fees during FY 1992. In the uncertain economy of the early 90's, most parties negotiated only one-year agreements, hoping that the situation would stabilize or improve sufficiently the next year to permit more productive negotiations at that time. Beginning about the middle of calendar year 1994, parties began returning to the practice of negotiating multi-year agreements, thereby reducing the number of agreements which expired this year. The decline in demand this year reflects more significant factors affecting the bargaining process--public perception of a strong regional economy, increased state aid to education, and the availability of additional resources from which to fund settlements.

It should be noted that a mediation is recorded as a single request, even though it involves multiple bargaining units of a single employer. In such situations, the mediator undoubtedly expends substantial periods of time on issues particular to individual bargaining units, making the mediation process a long and complicated one. Thus, the number of mediation requests filed is not a completely accurate reflection of the Panel's actual work load.

The following table reflects the Panel's rate of success over the past several years:

Fiscal Year	Settlement Rate
1987	77%
1988	81%
1989	78%
1990	79%
1991	78%
1992	74%
1993	68.5%
1994	75.2%
1995	50%
1996	66.2%
1997	82.1%
1998	82.3%
1999	73.91%
2000	80.7%
2001	85.94%

The Panel's settlement rate increased substantially this year. Anecdotal evidence from Panel members indicates that the continued robust performance of the state and regional economies resulted in the availability of additional resources to fund settlements this year. The major factor that had a negative impact on settlement rates was the dramatic increase in health insurance premiums. Prior to FY 2000, health insurance costs had remained relatively stable for the last few years due to efficiencies and economies realized through the introduction of managed care systems (HMO's, PPO's, etc.); however, premiums rose dramatically in the last quarter of FY 2000 and continued to increase throughout FY 2001.

Over the past several bargaining cycles, the most difficult issues in Maine public sector negotiations were those with fiscal impact, especially wages and health insurance financing. Again this year, particularly in K-12 education, there was far less emphasis on financial issues and increased focus on language issues, especially those concerning the impact of educational policy changes on the working conditions of education sector employees. Wage settlements continued to be in the 3% range. Since we began the program several years ago, the settlement rate in our non-confrontational preventative mediation initiative has always been 100%. The demand for such services is indicative of maturity in labor-management relations, with parties more focused on mutual problem solving than on taking and holding positions at the expense of the other party. This year, however, the settlement rate for this type of case dropped off to 77.78% (9 cases completed, 7 settlements).

Since both new filings and cases carried over from prior years contributed to the actual work load of the Panel in the course of the 12-month period, we have reported settlement figures that represent all matters in which mediation activity has been completed during the reporting period. The above settlement rate only includes matters where the mediator was actively involved in the settlement. Although parties who reach agreement after conclusion of the formal mediation process often credit the mediator's efforts as having been instrumental in resolving the dispute, the degree to which mediation contributed to the settlement is too speculative for such cases to constitute settlements for reporting purposes. Likewise, cases in which a request for mediation was filed but in which the parties settled their differences prior to participating in mediation are not included in the settlement rate.

The distribution of the Panel's caseload, according to the statute pursuant to which referrals were made over the last several years, is as follows:

Fiscal Year	New Cases Referred	Cases Referred Under State, University and Judicial Acts	Cases Referred Under Municipal Act, inc. County and Turnpike Authority Referrals	Private Sector Referrals	Agricultural Marketing Act
1987	120	3	113	4	--
1988	91	6	81	1	3
1989	107	5	100	0	2
1990	115	6	106	1	2
1991	89	1	86	2	0
1992	94	3	90	1	0
1993	115	4	109	0	2
1994	114	4	109	0	1
1995	77	9	67	0	1
1996	69	5	64	0	0
1997	74	12	60	2	0
1998	68	2	66	0	0
1999	69	3	66	0	0
2000	73	6	67	0	0
2001	61	6	55	0	0

The 61 requests for services received this year involved the following employee organizations:

Maine Education Association/NEA¹

37 requests

¹While reference is made to the Maine Education Association/NEA for sake of simplicity, the various activities described were undertaken by local associations which are affiliated with MEA.

Teamsters Union Local 340	14
AFSCME Council 93	5
Maine State Employees Association	2
American Federation of Teachers	1
International Association of Firefighters	1
Independent School Employees Ass'n	1

While the number of mediation requests from most of our large state-wide employee organizations declined significantly this year, the number of requests from the Maine Education Association increased, from 36 to 37 requests. Running as it does contrary to the trend regarding other employee organizations, this continued level of demand may reflect the different focus in K-12 negotiations. As noted above, school sector negotiations are increasingly concerned with language issues--particularly whether existing or proposed agreement provisions are matters of educational policy. Non-school negotiations continue to focus primarily on economic issues and such issues have proven to be more readily resolved, with or without the involvement of mediation.

The average number of mediation days per case decreased from 4.19 in FY 2000 to 3.89 for the combined total of 64 matters, including carryovers, for which mediation was concluded. The maximum mediation days devoted to a single case this fiscal year was 17, preventative mediation between the State of Maine and the Maine State Employees Association to develop new work schedules for employees in the Law Enforcement Services bargaining unit. Of the 64 cases in which mediation was concluded this year, over half (53.125%) were resolved in 2 days or less (20 cases were resolved in one day and 14 were resolved in two days). The mediation-days per case for all mediations completed this year was 3.89 days, with traditional mediations averaging 3.60 days per case and preventative mediations averaging 6.67 days per case.

The figures for the past fifteen-year period are summarized below:

Fiscal Year	Mediation-Days Expenditure Per Case
1987	2.20
1988	2.45
1989	2.23
1990	2.52
1991	2.67
1992	2.75
1993	2.40
1994	2.51

1995	3.33
1996	3.20 (3.20)
1997	3.76 (3.25)
1998	2.84(2.27)
1999	3.46(3.47)
2000	4.19(4.02)
2001	3.89(3.60)

In order to assist in comparing the number of mediation-days per case over a multi-year period, we have included the number of mediation-days per case in traditional mediations within parentheses in the above table for the last 6 years--years during which preventative mediation services were provided. Although such services were also provided in 1995, only 2 preventative cases were concluded that year and we were unable to break out separate meaningful statistics for traditional and preventative cases for that year.

Of the mediations, including carryovers, that were concluded in FY 2001, 9.375% proceeded to fact finding. The percentage of cases proceeding to requests for fact finding after mediation in each of the past several years is indicated below:²

Fiscal Year	Percentage of Cases Proceeding to Fact Finding
1987	20%
1988	17%
1989	21.5%
1990	20.73%
1991	28.81%
1992	23.8%
1993	23%
1994	23.6%
1995	25.8%
1996	30.99%
1997	15.94%
1998	14.71%
1999	30.43%
2000	14.04%

²All fact-finding requests are included, whether later dismissed, withdrawn or settled prior to hearing. Fact-finding hearings were convened in 9 cases, the parties settled prior to fact finding in 5 cases, and 3 cases are pending.

2001	9.375%
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Assuming the average of 3.89 mediation-days per case, the 23 matters still pending will consume an additional 89.5 mediation-days, for a total expenditure of approximately 338.5 mediation-days devoted to matters docketed in or carried over to FY 2001.

Members of the Panel of Mediators during the past fiscal year were:

John Alfano	Biddeford
Osip Bukharin	Gorham
James Carignan	Lewiston
Paul Harrison	Bangor
Jack Hunt	Kennebunk
John J. Mahon	Camden
Charles A. Morrison	Auburn
Richard Taylor	Scarborough
Don Ziegenbein	Bangor
Vacant	

A significant development affecting the Panel that occurred this year was enactment of P.L. 2001, ch. 92, An Act to Permit Grievance Mediation by the Panel of Mediators. The idea for this bill arose out of collective negotiations in a coastal community in Hancock County. The details were widely discussed in the public sector labor-management community, including a focus group of practitioners, and representatives of management and labor made suggestions that were incorporated into the bill. The new law permits public employers and bargaining agents to agree to use the Panel of Mediators to attempt to resolve grievances at a point prior to arbitration. The availability of grievance mediation service could substantially shorten the time required to resolve grievances and save the parties the cost of arbitration as well. Under the law, the use of grievance mediation is a permissive subject of bargaining upon which the parties may, but are not required to, bargain. This means that if the parties are unable to agree upon a grievance mediation provision, neither party could lawfully insist that the issue be presented to fact finders or an interest arbitration panel. While the legislation garnered near universal support from the public sector labor-management community, it is difficult to gauge the actual demand for the service.

A new initiative undertaken this year is the convening of a series of seminars, discussing a variety of topics regarding public sector labor-management relations in Maine. The seminars were conceived by State Mediator John Alfano and have been co-hosted by the Maine Labor Relations Board, the State Board of Arbitration and Conciliation (“BAC”), and the Panel of Mediators. The programs provide practitioners an opportunity to meet and discuss practical and legal issues that arise in the labor-management dispute resolution community, in addition to fostering informal

interaction away from the heat of a particular dispute or bargaining situation. To date, three sessions have been held -- one on October 17, 2000, at the University of New England Biddeford Campus, entitled "Issues in Mediation," another on February 9, 2001, at Central Maine Technical College in Auburn, focusing on "Employee Discipline in Grievance Arbitration," and the third, on June 6, 2001, at the Augusta State Armory, titled "Decision-making in Arbitration." The first two programs consisted of panels of experienced labor-management practitioners, while the latter was conducted by the primary members of the BAC. Attendees at the latter two programs were awarded 2.6 hours and 2.5 hours of continuing legal education credit, respectively, from the Board of Bar Overseers.

The mediation process continues to be the cornerstone of the dispute resolution process in Maine. Practitioners in the public sector labor relations community have come to accept and value the process and the expertise and competence of members of the Panel. The members of the Panel have gained practical experience and insights that are invaluable in the effective use of this tool. The Panel's reputation and expertise, coupled with a growing awareness of alternative dispute resolution in our society, are likely to result in continued demand for the Panel's services in the future.

Dated at Augusta, Maine, this 29th day of June, 2001.

Respectfully submitted,

Marc P. Ayotte
Executive Director
Panel of Mediators and
Maine Labor Relations Board